

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-347-G – ORDER NO. 2004-201

APRIL 15, 2004

IN RE:)	
)	
Application of South Carolina Pipeline)	ORDER APPROVING
Corporation for Approval of an Agreement)	STIPULATION AND FIRM
for Firm Transportation Service Between)	TRANSPORTATION
Columbia Energy LLC and South Carolina)	SERVICE AGREEMENT
Pipeline Corporation.)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the request of South Carolina Pipeline Corporation (“SCPC” or “Company”) for approval of a Firm Transportation Service Agreement between Columbia Energy, LLC (“Columbia Energy”) and the Company effective as of November 18, 2003 (the “FT Contract”). SCPC filed the FT Contract pursuant to 26 S.C. Code Ann. Reg. 103-446 (1976) on November 25, 2003.

A Notice of Filing regarding the FT Contract was prepared, and the Commission’s Executive Director instructed SCPC to publish the prepared Notice of Filing in newspapers of general circulation in the affected areas. SCPC complied with the Executive Director’s instructions by timely publishing the Notice of Filing and thereafter filing affidavits of publication attesting to publication as directed by the Executive Director.

The Notice of Filing established January 2, 2004, as the date by which interested persons or entities could timely file petitions to intervene or present their views in writing with the Commission. Nucor Steel-South Carolina and Nucor Steel-Berkley County, divisions of Nucor Corporation (collectively “Nucor”), timely filed a petition to intervene. No other petitions to intervene or protests were filed with the Commission.

On January 16, 2004, SCPC filed a Stipulation entered into between SCPC and Nucor. *See* Hearing Exhibit No. 3. In the Stipulation, Nucor affirmatively states that it does not object to the FT Contract being approved for the benefit of Columbia Energy as long as Nucor’s rights to request service under similar terms and conditions are preserved under the terms and conditions set forth in the Stipulation. *Id.*, at p.2.

SCPC also filed with the Commission an agreement reached with the Consumer Advocate for the State of South Carolina (“Consumer Advocate”) dated January 15, 2004 (“Agreement”). *See* Hearing Exhibit No. 2. The Consumer Advocate asked whether approval of the FT Contract would result in an increase in rates to existing services. In the Agreement SCPC stated that approval of the FT Contract would not result in an increase in rates to existing customers. *Id.*, at p.2. Based on this assurance, the Consumer Advocate agreed not to intervene in this docket and not object to the approval of the FT Contract. *Id.*, at p.2.

On January 21, 2004, SCPC filed a Motion to Approve Contract requesting that the Commission approve the FT Contract without requiring a public hearing. No party opposed SCPC’s motion and, in fact, both Nucor, the only intervenor, and Columbia Energy, the customer, consented to the motion. In the Stipulation, Nucor concurred,

“The [FT] Contract may be considered and approved by the Commission as it may deem appropriate without the need for a formal hearing.” *See* Hearing Exhibit No. 3 at p.2. By letter dated January 22, 2004, counsel for Columbia Energy informed the Commission that Columbia Energy agreed with and supported SCPC’s motion and, therefore “[u]rge[d] the Commission to move forward to approve the [FT Contract] without a formal hearing” *See* Hearing Exhibit No. 1. Notwithstanding the support given to SCPC’s motion, the Commission denied SCPC’s Motion to Approve Contract on February 3, 2004, on the grounds that additional information was needed regarding the FT Contract which was not readily available from the FT Contract itself or contained in the sworn, prefiled direct testimony.

Therefore, a formal public hearing in this matter was held on February 4, 2003, beginning at 10:30 a.m. in the office of the Commission, with the Honorable Mignon L. Clyburn, presiding. Mitchell Willoughby, Esquire, and Catherine D. Taylor, Esquire represented SCPC. Frank R. Ellerbe, III, Esquire and Bonnie D. Shealy, Esquire entered appearances on behalf of Columbia Energy. Jocelyn D. Boyd, Esquire appeared on behalf of the Commission Staff.

In support of its request that the FT Contract be approved, SCPC presented the testimony of Samuel L. Dozier, Vice President, Customer Service and Market Development. SCPC also presented the following documents, all of which the Commission admitted into evidence without objection:

1. A copy of a letter dated January 22, 2004, addressed to the Commission’s Executive Director from Frank R. Ellerbe, III, Esquire, counsel for Columbia Energy. *See* Hearing Exhibit No. 1; and

2. A copy of the Agreement between SCPC and the Consumer Advocate dated January 15, 2004. *See* Hearing Exhibit No. 2; and
3. A copy of the Stipulation between SCPC and Nucor dated January 15, 2004. *See* Hearing Exhibit No. 3.

Columbia Energy did not present any testimony, but reiterated its support as set forth in Mr. Ellerbe's January 22, 2004 letter urging the Commission to approve the FT Contract. Nucor did not appear at the hearing.

II. FINDINGS OF FACT

After carefully considering the evidence, including the testimony and exhibits presented in this docket as well as a thorough examination of the terms and conditions of the FT Contract, the Commission makes the following findings of fact:

A. Background

1. Columbia Energy is a Delaware limited liability company and a wholly-owned, indirect subsidiary of Calpine Corporation ("Calpine"), a Delaware corporation and one of the nation's largest independent power producers.

2. Columbia Energy operates a natural gas-fired, combined cycle power generation facility ("Generation Facility") located in Calhoun County, South Carolina and is in the business of, among other things, manufacturing, producing, and providing thermal energy from the Generation Facility to a manufacturing plant known as Voridian, a division of Eastman Chemical Company. Columbia Energy was issued a Certificate of Environmental Compatibility and Public Convenience and Necessity for the construction and operation of the Generation Facility by this Commission by Order No. 2001-108 in Docket No. 2000-487-E.

3. Columbia Energy's predecessor-in-interest, a company known as SkyGen, contacted SCPC in mid-1999 and inquired as to whether SCPC could provide its planned Generation Facility with natural gas service. Specifically, SkyGen inquired as to whether SCPC would provide it with firm transportation service as well as interruptible transportation service.

4. SCPC initially proposed a firm sales service, but SkyGen was interested in firm transportation service and rejected SCPC's efforts to offer firm sales service. SkyGen informed SCPC that it was considering whether to build its own pipeline from Southern Natural Gas's ("Southern Natural") terminus in Aiken County, South Carolina to its planned Generation Facility. If SCPC were competitive with SkyGen's bypass alternative, then SkyGen would take service from SCPC. However, if SCPC were not competitive with SkyGen's bypass option, then SkyGen intended to bypass SCPC's facilities.

5. After carefully analyzing the costs that Columbia Energy would face in constructing a pipeline some sixty (60) miles in length to supply its Generation Facility with 85,000 dekatherms ("Dt") per day of natural gas and developing its estimates of what rates, terms and conditions would be required for it to compete for Columbia Energy's business, SCPC informed Columbia Energy that it would compete with Columbia Energy's bypass option.

B. SCPC's construction of new pipeline extension and compressor station upgrade

6. SCPC had served the Voridian manufacturing facility for some time. Therefore, it had existing pipeline facilities and rights-of-way to transport natural gas to

the Generation Facility, but the existing pipe was not adequate to provide the transportation capacity required by Columbia Energy. Additional pipeline facilities were needed to adequately serve the new demand for capacity.

7. SCPC informed Columbia Energy that it would construct additional facilities to meet Columbia Energy's capacity needs. This construction was expected to require a new twenty-seven (27) mile loop from the Generation Facility to an interconnection point on SCPC's existing system near Salley. In addition, SCPC would have to upgrade certain existing facilities in order to accommodate Columbia Energy's need for transportation capacity. Finally, a new meter station would be required.

8. Columbia Energy and SCPC entered into a Precedent Agreement on April 25, 2001, which provided that SCPC would complete all pipeline construction and upgraded facilities on a timeline that would insure that SCPC could provide transportation service to Columbia Energy's Generation Facility not later than December 1, 2002.

9. In order to transport natural gas from Southern Natural's interstate pipeline terminus in Aiken County to Columbia Energy's Generation Facility, SCPC constructed approximately twenty-seven (27) miles of 20-inch steel pipe connecting the Generation Facility with SCPC existing facilities near Salley. Additionally, SCPC designed and constructed a meter station to account for Columbia Energy's possible flow rate range, variability of flow, rate of change of flow, pressure requirement, and other engineering parameters.

10. In order to transport gas to Columbia Energy's Generation Facility, SCPC also upgraded its compressor station located in Aiken County. The upgrades to SCPC's existing compressor station enhanced compressor performance thereby increasing pressure and throughput capability, which benefits SCPC's entire pipeline system. The total cost of new pipeline facilities and upgrades to the existing compressor station was approximately sixteen million dollars (\$16,000,000).

11. SCPC met its construction obligations under the Precedent Agreement. Columbia Energy had not completed construction of its Generation Facility by December 1, 2002, and was not prepared to take gas as of the date. Columbia Energy approached SCPC with a request to delay the commencement of firm transportation service.

C. The FT Contract

12. SCPC and Columbia Energy engaged in discussions over several months as Columbia Energy continued to construct its Generation Facility. These discussions culminated in the parties executing a Firm Transportation Service Agreement effective as of November 18, 2003. Some of the key terms of the FT Contract are highlighted below¹:

- a. The term of the FT Contract is for twenty years, and Columbia Energy possesses the right to two five-year extensions as long as it maintains its credit assurances under the FT Contract.

¹ The terms highlighted in this section are extracts from the FT Contract and may only paraphrase a part of a provision. Consequently, these highlighted terms are not designed to interpret or construe the terms and conditions of the FT Contract. In order to interpret or construe any provision of the FT Contract, reference to the complete agreement should be made.

- b. Subject to the terms and conditions set forth in the FT Contract, SCPC is required to deliver scheduled quantities of gas up to the Maximum Daily Transportation Quantity, which is 85,000 Dt per day.
- c. Columbia Energy is responsible for arranging and securing its own natural gas supply, including upstream transportation necessary to deliver its gas to the receipt points specified in the FT Contract. Accordingly, SCPC has not released any upstream capacity in order to serve Columbia Energy under the terms and conditions of the FT Contract. In addition, Columbia Energy does not have access to SCPC's on-system liquefied natural gas services, and Columbia Energy is not eligible for participation in SCPC's Industrial Sales Program Rider.
- d. SCPC is only responsible for delivering Columbia Energy's natural gas supply from the receipt points specified in the FT Contract to Columbia Energy's Generation Facility. Therefore, any credit issues related to the purchase of gas are not borne by SCPC.
- e. Columbia Energy will pay to SCPC a monthly reservation charge ("MRC") in the amount of seven dollars and thirty-five cents (\$7.35) per Dt per day of the capacity subscribed. The MRC will not adjust during the first four (4) years after the Commencement Date set forth in the FT Contract. However, the MRC will adjust beginning with the fifth year of the FT Contract and for each year thereafter based upon the equation set forth in Exhibit E of the FT Contract. In addition to the MRC, Columbia Energy will pay to SCPC a usage charge in the amount of two cents (\$0.02) per Dt of gas delivered as well as a fuel retainage percentage.
- f. The MRC is six hundred twenty-four thousand seven hundred fifty dollars (\$624,750). Therefore, the MRC generates annual revenue for the Company in the amount of seven million four hundred ninety-seven thousand dollars (\$7,497,000). In addition to the MRC, the usage charge of two cents (\$.02) per Dt of gas delivered generates revenue for the Company as well as certain surcharges set forth in the FT Contract. Moreover, some of Columbia Energy's payment obligations under the FT Contract are supported

and guaranteed by a parental guaranty, a letter of credit, and a third-party guaranty.

13. Because the service needs of Columbia Energy are `unique, the rates, terms and conditions of the FT Contract will not be made available to other entities unless similarly situated to that of Columbia Energy.

14. The FT Contract will not adversely affect SCPC's rates for existing services. No one has challenged the FT Contract and its terms and conditions as being unreasonable, imprudent or not in the public interest.

D. Stipulation between SCPC and Nucor

15. On January 16, 2004, SCPC filed a Stipulation entered into between SCPC and Nucor, in which Nucor, among other things, reserved its rights to seek services similar to those to be provided under the FT Contract, that is, "Commission approval of the [FT] Contract is not intended to and does not and should not negatively affect Nucor rights in any way." *See* Hearing Exhibit No. 3.

16. The Stipulation between SCPC and Nucor further states, "Nucor does not object to the FT Contract being approved for the benefit of Columbia Energy . . . so long as Nucor's rights are adequately protected as set forth herein." *Id.* at p.2.

E. Letter Agreement Between SCPC and Consumer Advocate

17. On January 15, 2004, SCPC and the Consumer Advocate for the State of South Carolina entered into an Agreement in which, among other things, SCPC assured the Consumer Advocate that Commission approval of the FT Agreement would not cause an increase in the rates of SCPC's existing services. *See* Hearing Exhibit No. 2.

18. The Agreement between SCPC and the Consumer Advocate further provides that, based on SCPC's statement that service provided under the terms and conditions of the FT Agreement will not cause an increase in rates of existing services, the Consumer Advocate does not object to the Commission's approval of the FT Agreement.

III. CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Commission concludes, as a matter of law, the following:

A. Applicable Statutes and Regulations

1. The Commission has jurisdiction over this matter pursuant to S.C. Code Ann. § 58-3-140(A) (Supp. 2003), S.C. Code Ann. § 58-5-210 (1976), and 26 S.C. Code Ann. Reg. 103-446 (1976).

2. Section 58-3-140(A) states:

The Public Service Commission is vested with the power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

3. Section 58-5-210 states:

The Public Service Commission is hereby, to the extent granted, vested with the power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts

its rights to regulate the rates, and services of every “public utility” as herein defined.

4. Regulation 103-446 states, in pertinent part:

Copies of all . . . contracts for service which involve rates, forms of contracts for service, charges for service connections, and extensions of mains, and all rules and regulations concerning the relations between the customer and gas utility, shall be filed with the Commission and shall be subject to prior approval by the Commission. All contracts for service between an industrial customer and any gas utility which establish or adjust rates for any industrial customer shall be filed with the Commission by each gas utility and may become effective as of the date of the contracts, unless disapproved or modified by the Commission.

B. Stipulation between SCPC and Nucor

5. No one challenged or opposed the Stipulation between SCPC and Nucor. SCPC and Nucor are in agreement that the Commission should approve the Stipulation. The effect of the Stipulation is to preserve certain rights of Nucor and SCPC until future events, if ever, make those rights ripe for determination. Consequently, based upon the clear, convincing, and uncontradicted evidence presented at the hearing, the Stipulation entered into between SCPC and Nucor is reasonable, conserves valuable Commission hearing time and resources and thereby promotes administrative economy, and should be approved.

C. The FT Contract

6. No one challenged or opposed any services, terms and conditions of the FT Contract, and the parties are in agreement that the Commission should approve it. Moreover, based upon the clear, convincing, and uncontradicted evidence presented at

the hearing by SCPC, Commission approval of the FT Contract will result in additional revenue for the Company. Further, the FT Contract is supported and guaranteed by a parental guaranty, a letter of credit, and a third-party guaranty, which limits SCPC's credit exposure in this case. Moreover, the additional revenue realized under the FT Contract is beneficial to SCPC and its entire pipeline system, and the upgrades to SCPC's existing compressor station are beneficial to the entire pipeline system as well. Therefore, based upon the clear, convincing, and uncontradicted evidence presented at the hearing, the FT Contract and its services, terms and conditions are hereby found to be reasonable, prudent, and in the public interest, and therefore the FT Contract should be approved for the provision of services as stated therein by SCPC to Columbia Energy on and after March 1, 2004.

IV. ORDER

NOW THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED THAT:**

1. The Stipulation between South Carolina Pipeline Corporation and Nucor Steel-South Carolina and Nucor Steel-Berkley County, divisions of Nucor Corporation is approved.
2. The Agreement between SCPC and the Consumer Advocate for the State of South Carolina is approved.
3. The Firm Transportation Service Agreement between Columbia Energy, LLC and South Carolina Pipeline Corporation, including the specific quantities, costs,

prices, and other particulars as quoted in the Commission's Findings of Fact at Paragraph 12 herein, is approved effective April 15, 2004.

4. The Commission Staff shall monitor SCPC's earnings, expenses and facilities realized, consumed or used under the FT Contract by conducting a review of the Company's Quarterly Report as filed with the Commission. The Company shall include as part of its total and industrial operations on its Quarterly Report all revenues, expenses and facilities used and useful in providing service under the FT Contract. After the Company has operated under the FT Contract for a period of twelve (12) months, the Commission may schedule a hearing for the purpose of requiring SCPC to report to the Commission on the financial results of its first year of operations under the FT Contract.

5. While the Commission herein approves the FT Contract, the issue of the prudence of any construction of new facilities undertaken to provide service under the FT Contract is specifically reserved by the Commission until SCPC seeks a general rate increase.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Mignon L. Clyburn, Chairman

ATTEST:

/s/
Bruce Duke, Executive Director

(SEAL)